

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4936 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

DINKARRAY L VIDYA

Versus

UNION OF INDIA

Appearance:

MR YS MANKAD for Petitioner
None present for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE
Date of decision: 26/08/97

ORAL JUDGMENT

#. The matter was called out for hearing in the first round, then in the second round and lastly in the third round, but none put appearance on behalf of respondents. Perused the Special Civil Application and heard learned counsel for the petitioner.

#. The petitioner, President of the Kutch District

Pensioners' Association, filed this Special Civil Application before this Court for on behalf of five war widows for enhancement of amount of their family pension.

#. Names of those war widows, details of the amount of pension and the date from which they are getting the same have been given in annexure 'A' to the petition. Enhancement has been claimed by petitioner on the basis of the Office Memorandum dated 11th April 1983 of the Government of India, Ministry of Finance, Department of Expenditure, New Delhi, under which the family pension was stepped up to Rs.150/- p.m. with effect from 1st April 1983.

#. Reply to the Special Civil Application has been filed by respondents and the claim of the petitioner for five war widows for enhancing the pension amount has been contested on the ground that the aforesaid Office Memorandum is not applicable to these widows as they are not granted any family pension under the Rules as enumerated in the Resolution. It has further been stated that the war widows were given the family pension purely on humanitarian grounds and not as a legal right. However, the family pension of five war widows was enhanced to Rs.150/- p.m. purely as ex-gratia measure with effect from May 1986. The relevant material has been produced on record.

#. I find from the documents enclosed to the reply that enhancement has been made with reference to the minimum family pension prescribed under the Government of India Resolution dated 11th April 1983, but curiously enough, the effect has been given from May 1986. From the documents enclosed to the reply to Special Civil Application, I also find that these five war widows were getting the pension in accordance with the War Pension and Detention Allowance (Indian Seamen) Scheme, 1945. In para 7 of the enclosure to the reply, the respondents have stated that instead of defending the case in the Court, it would be magnanimous on the part of the Government to grant benefit to the widows without waiting for the Court's verdict. So the respondents have given benefit to the war widows with reference to the Government Resolution aforesaid though these widows have approached this Court. Once the respondents have shown magnanimity to grant that benefit to the widows, I fail to see any justification to restrict that benefit only from May 1986. Immediately after the Resolution of the Government dated 11th April 1983, the war widows made a representation to the Prime Minister of India and that representation has been sent to the Ministry of Shipping

and Transport, Mercantile Marine Department for consideration. Other representations have been sent from time to time to all concerned authorities but nothing has been done. The Special Civil Application has been filed by petitioner before this Court on 26th August 1985 when nothing has been done on their representations. The claim of the petitioner for war widows was raised for enhancement of minimum family pension within a reasonable time from the date of Resolution dated 11th April 1983. The enhancement of the amount of family pension to the war widows from May 1986 is wholly arbitrary and unjustified. No reasons, good, bad or indifferent have been given to restrict this benefit only from May 1986. It is a different matter that the respondents have taken a decision in the matter without awaiting the Court's verdict in June 1986. Otherwise, in case this decision would have been taken in 1997, the benefit would have been extended from 1997. If the respondents have taken a long period of three years to decide the matter, how far any fault can be found with the war widows in approaching this Court. It is a nominal amount to be paid to the war widows and in the prevailing conditions in the country how far the Government is justified to grant the enhancement of family pension only from 1986 and compel the petitioner to approach this Court? When the respondents have considered the petitioner's case on their own and have magnanimously granted benefit to these widows without waiting for the verdict of this Court, then that magnanimity should have been to the extent of the claim made by war widows.

#. In the result, this Special Civil Application succeeds and the same is allowed. The respondents are directed to pay the difference of the amount of family pension or allowance to the five war widows from 1st April 1983, till the date from which enhanced amount of family pension was started to be paid to five war widows in pursuance of the order of respondent dated 27th June 1986, enclosed to the reply. This difference of amount payable to them should be determined within a period of two months from the date of receipt of certified copy of this order, and thereafter the amount so determined should be paid to the war widows within one month next. All care should be taken by respondents to see that this amount is paid only to war widows concerned and not to any intermediary or any other person. In case any of the war widows no more survives, then that amount shall be retained by the Government. The petitioner has filed this writ petition in representative capacity espousing the cause of war widows, and as such, this amount has to be paid to the concerned war widows only if they survive.

Rule made absolute in aforesaid terms with no order as to costs.

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(sbl)